IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO.31 OF 2004

Reshma G. Bhandari ....Petitioner
V/s.
Yesubai H. Koli ....Respondent

Mr.H.T. Pawar for the Plaintiff.

Mr.Y.S. Jahagirdhar, Senion Counsel as Amicus Curie.

CORAM : S.J. VAZIFDAR, J.
DATED : 30TH OCTOBER, 2007.

ORAL JUDGMENT :

1. The Petition is filed to revoke the Letter of Administration dated 15.11.2005 granted by this Court in favour of the Respondent in Petition No.501 of 1995 filed by the Respondents.

2. I have found it unnecessary to consider the validity of the grant of the Letters of Administration in favour of the Respondents, as in my view the Petitioner is not entitled to maintain this Petition.

3. The Letters of Administration were granted in Petition No.501 of 1995 in respect of the estate of one Sakharam Padman Keni (hereinafter referred to as the deceased), who died intestate in Mumbai on

6.8.1990.

4. It is necessary to consider the Petitioners' connection with the deceased. The Petitioner claims a right in the estate of the deceased ultimately through the brother of the predeceased wife of the deceased.

5. The wife of the deceased, Sonibai predeceased the deceased. One Akhad S. Bhandari was the brother of Sonibai. Akhad had five children one of whom was Smt.Yeshubai Bhandari. Smt.Yeshubai in turn had five children one of whom was her daughter Jaywantibai G. Bhandari. The Petitioner is the daughter of the said Jaywantibai. Akhad and Yeshubai have died. Jaywantibai, who, it is alleged, is missing.

6. Thus the Petitioner claims through her mother Jaywantibai, who in turn claims through her mother Yeshubai who in turn claims through her father Akhad i.e. the brother of Sonibai. What falls for consideration is whether the Petitioner has any interest in the estate of the deceased Sakharam. The question therefore is whether Akhad succeeded to estate of Sakharam. In other words the question to be considered is whether a person succeed to the estate of his deceased sister husband when she had

predeceased her husband.

7. The Respondents were absent despite having been served. In view of the nature of the matter, the question of law which arises and in view of fact that the matter is to be decided in the absence of other side, I considered it appropriate to request Mr.Y.S. Jahagirdar, Senior Advocate of this Court to appear amicus curie. Before going any further I must express my appreciation for the valuable assistance rendered by Mr.Jahagirdar.

8. Section 8 of The Hindu Succession Act, 1956 reads as under :-

> **"8. General rules of succession in the case of males** - The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter -
>
> (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule ;
>
> (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule ;
>
> (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased ; and
>
> (d) lastly, if there is no agnate, then upon the cognates of the deceased."

9. The Petitioner is neither a Class-I heir nor a Class-II heir nor an agnate of the deceased. It is contended however that the Petitioner is a cognate of the deceased. Sections 3(1)(a), (c) and (e) of the said Act read as under :-

> **"3. Definitions and interpretation.** - (1) In this Act, unless the context otherwise requires -
>
> (a) "agnate" - one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males ;
>
> (c) "cognate" - one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males ;
>
> (e) "full blood", "half blood" and "uterine blood" -
>
> (i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives ;
>
> (ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands ;"

10. On a plain reading of Section 3(e), it is clear that Akhad was not related to the deceased by full blood or by half blood or by uterine blood Akhad and the deceased are not descended from a common

ancestor by the same wife or by different wives. Nor were they descended by a common ancestress but by different husbands.

11. Mr.Jahagirdar invited my attention to Section 15 of the said Act which reads as under :-

> **"15. General rules of succession in the case of female Hindus.-** (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, -
>
> (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband ;
>
> (b) secondly, upon the heirs of the husband ;
>
> (c) thirdly, upon the mother and father ;
>
> (d) fourthly, upon the heirs of the father ; and
>
> (e) lastly, upon the heirs of the mother.
>
> (2) Notwithstanding anything contained in sub-section (1)-
>
> (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father ; and
>
> (b) <u>any property inherited by a female Hindu from her husband</u> or from

> her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

12. I find well founded Mr.Jahagirdars' submission that Section 15(2) applies to the facts of the present case. Admittedly the claim is in respect of the estate of the deceased inherited, albeit notionally, by his sister Sonibai. That the concept of notional inheritance is itself unfounded is another matter.

13. Thus Akhad would succeed only to that part of the estate of his deceased sister Sonibai which was inherited by her from her father or mother. This is in view of the provisions of sub-section (2) of Section 15 of the said Act. Even if Sonibai had not predeceased her husband, the property inherited by her from her husband would devolve upon the heirs of the husband. Admittedly, in the present case, Sonibai predeceased her husband. She therefore, did not inherit the property of her deceased husband.

14. Mr.H.T. Pawar, the learned counsel appearing

on behalf of the Petitioner invited my attention to the judgment of a Division Bench of this Court in *Nanasaheb Vishwasrao v. Parwatibai Shankar Chavan and another, 1980 Mh.L.J. 586.* The judgment in fact militates against his submission. In order to appreciate the observations of the Division Bench relied upon by Mr.Pawar, it is necessary to examine the facts.

. One Sakharam had two sons Dagdu and Shankarrao who expired in 1942 and 1931 respectively. Dagdu's wife Laxmibai expired in 1994. Parvatibai was the wife of Shankarrao. One Baburao was the son of Dagdu and Laxmibai.

. The Plaintiff had filed the suit for specific performance of an agreement dated 17.1.1963 by which Baburao had sold a property purchased by his father Dagdu on 4.5.1933 to the Plaintiff. The Plaintiff also sought a declaration that the judgment and decree dated 10.7.1962 between Baburao and Parvatibai was collusive and not binding.

. The trial Court decreed the suit and held inter-alia that Parvatibai had no interest in the property and that the decree passed in the suit

between Parvatibai and Baburao would not confer any right on her. Parvatibai filed an Appeal against the said judgment which was allowed holding that the suit filed by Parvatibai was not collusive and the decree obtained therein was not void and that Parvatibai became the full owner of her share in the property. The Plaintiff filed an Appeal before this Court in which the said judgment was delivered.

. The Division Bench considered the legal submission advanced on behalf of the Appellant/Plaintiff that after the death of Baburao during the pendency of the first Appeal, the entire Appeal had abated and the judgment rendered by the learned single Judge of this Court was void. The Division Bench held that the argument was met by the fact that Parvatibai being the paternal aunt of Baburao was on record and therefore the Appeal did not abate and the mere inadvertent omission to bring the fact of death on record and deleting the name of Baburao would not render the judgment of the learned single Judge void. The Division Bench held : "Married wife in a family thus becomes related to it wholly through her male spouse". The Division Bench further held as under :

> "The term "agnate" in common parlance simply indicates relatives whose kinship is traceable exclusively through males or any paternal kinsem as contrasted, with "cognate" as indicative of those relatives generally on the mother's side. We have little hesitation in holding that a father's brother's wife would be related to the propositus like Baburao through his father and as such would be "an agnate" in common parlance. Even turning to the definitions enacted by the Hindu Succession Act, 1956, we do not find any indication to exclude a father's widow from agnate by reason of the text of that definition."

. The Division Bench further held that the word "blood" in Section 3 of the said Act is not merely biological but includes familial, racial and other recognised modes of kinship amongst men. The Division Bench held ;

> "The principle on the basis of which the applicative judgments were rendered was clearly the principle to hold that by marriage the wife shared the community of the common particles of the body and was as such a relative "by blood".

15. It must be noted firstly that the fact situation before the Division Bench and in the present case are entirely different. In *Nanasaheb Vishwanath's* case Parvatibai who was held to represent the estate of her nephew Baburao was alive. In the present case, Sonibai is not alive. The Division

Bench therefore had no occasion to consider the position of the heirs of Parvatibai on the basis that she had predeceased her husband.

16. Further even assuming that Sonibai was alive, it would make no difference as far as the Petitioner is concerned in respect of the property that she may have inherited from her husband. This is clear form the following observations in paragraph 18 of the judgment which read as under :-

> "18. A submission was made that this would lead to enlarging the class of heirs even from wife's side and difficulties would arise in applying Rule 12, for whoever upon this interpretation is related to the wife would also be related to the husband. This submission is fallacious for two reasons. Firstly, we have held that in the case of a female married into the family, relationship by blood arises because of the marriage and secondly, she becomes kin in the family. Her relations in her original family would not answer any of these tests. Hardly, therefore, there is any scope for any such apprehension. We have preferred to put this somewhat comprehensive interpretation, for, in our view, that better furthers the scheme available in section 8 of the Hindu Succession Act. If we were not to recognise the effect of a Hindu marriage in this manner, obviously the cases will arise and the present one will be one of them where succession would fail, though a nearer relative from the family would be available. When succession is laid down by statutory enactment, we should lean to interpret it so as to avoid such a

> result. The scheme of section 8 of the Hindu Succession Act shows that with regard to a male Hindu dying intestate, it condifies the rules of succession and, by reference to the Schedule, states the heirs who will take the intestate succession of a male Hindu. The Schedule which is to be treated as part of section 8 describes several relations with reference to the male whose intestate succession is being provided for. Reference to relatives in Class I and Class II clearly shows that the entries therein are qualifying or descriptive entries having references to the relation of the heirs described therein and the person whose succession is being governed. In this regard, the Legislature while describing the heirs in Class I and Class II has not in any manner disregarded the relations that arise because of marriage. On the other hand, not only the relation by birth but also kinship that arise because of marriage appear to be the predominating considerations in the choice of the heirs grouped under Class I and II. The heirs in Class I and Class II having reference to clause (a) and clause (b) of section 8 respectively are thus nominated relatives under the statute, but nonetheless are described as relatives. It can, therefore, be safely inferred that in the matter of specification of relatives, the present legislation is based and is not averse to recognise the relation that comes because of the marriage along with the relations that arise because of birth in family."

. The words emphasised clearly indicate that the relations of a wife in her original family would not be entitled to inherent the property that she may in turn have inherited from her husband’s side. Thus

even assuming that Sonibai was alive, the Petitioner would not have been entitled to any interest in her husband's estate Sonibai having predeceased her husband her relations in her original family would not be entitled to any interest in the estate of her predeceased husband by virtue of Section 15 of the said Act. There is nothing in the Division Bench judgment which interprets Section 15 of the said Act in a manner contrary to the view taken by me.

17. Mr.Pawar also relied upon the following commentary in Mulla's Hindu Law 7th Edition Volume-I page 115 :-

> **"37. Gotraja sapindas and bhinna-gotra sapindas** - (1) Mitakshara divides sapindas of blood relations into two classes, namely :-
>
> (a) gotraja sapindas, that is, sapindas belonging to the same gotra or family as the deceased ; and
>
> (b) bhinna-gotra sapindas, that is, sapindas belonging to a different gotra or family from the deceased.
>
> **38. The classes of heirs -** (1) there are three classes of heirs recognised by Mitakshara, namely :
>
> (a) Gotraja sapindas ;
>
> (b) Samanodakas ; and
>
> (c) Bandhus.
>
> (2) The first class succeeds before

> the second, the second succeeds before the third."

18. I do not see how the commentary is of any assistance to the Petitioner. It will be noticed that the example of bhinna-gotra sapindas or bandhus viz. sisters son and brothers daughters son are of persons related to the deceased by blood. As per the judgment of the Division Bench at the highest Sonibai could have been considered to be related by blood to the family she was married into and not her relatives in her original family which would include Akhad and all those claiming through him including the Petitioner. I am bound by the judgment of the Division Bench. Secondly, as stated earlier, Sonibai predeceased her husband. The commentary is in any event therefore of no assistance to the Petitioner in the facts of this case.

19. In this view of the matter it is not necessary to consider the veracity or effect of the said Jaywantibai being allegedly missing.

20. In the circumstances, the Petitioner has no interest in the subject matter of this Petition. The Petition is therefore dismissed.